

JOE R. CARTER  
MILDRED E. CARTER

IBLA 84-224, 84-225

Decided October 1, 1984

Appeal from decisions of the Nevada State Office, Bureau of Land Management, rejecting desert land applications N-31855 and N-31856.

Affirmed.

1. Desert Land Entry: Applications -- Desert Land Entry: Water Right

A desert land entry application is properly rejected where the applicant proposes to irrigate his entry from underground water sources but fails to show at the time of filing his application that he has acquired a right from the state to appropriate underground water or that he has taken necessary steps to acquire such right.

APPEARANCES: L. A. Dever, Esq., Vernal, Utah, for appellants.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Joe R. Carter and Mildred E. Carter appeal from decisions dated November 30, 1983, of the Nevada State Office, Bureau of Land Management (BLM), rejecting desert land applications N-31855 and N-31856. The applied-for lands are described as the east half and the west half of sec. 20, T. 38 N., R. 63 E., Mount Diablo Meridian. Both applications state applicants propose to obtain irrigation water from a well. Citing 43 CFR 2521.2(d), BLM rejected the applications because they were unaccompanied by evidence showing appellants had applied to the Nevada State water engineer to appropriate underground water for the land sought. These appeals are consolidated for decision for the reason the issue raised by each case is identical, and because it is apparent the claims are related.

In support of their appeals, appellants have submitted photocopies of several cashier's checks dated January 6, 1981, purchased by Joe R. Carter. One of these is made payable to J. Blaine Bailey, described as an individual retained by the Carters to help with the desert land applications. Another check provided is made payable to the Nevada Water Resources Commission.

Appellants' statement of reasons explains: "According to Mr. Bailey the necessary forms were submitted to the Nevada State Water Engineer \* \* \*. Mr. Carter has been unable to locate Mr. Bailey in order to obtain any information why the appropriate [water appropriation] papers were not filed pursuant to his payment to him." Appellants' evidence concerning their water right applications to the State, therefore, establishes that no water appropriation has been made nor applied for by them.

[1] The Desert Land Act, 43 U.S.C. § 321 (1982), provides for the entry of desert lands for the purpose of reclaiming them "by conducting water upon the same \* \* \*. Provided, however, That the right to the use of water by the person so conducting the same \* \* \* shall depend upon bona fide prior appropriation." (Emphasis in original.) The pertinent regulation, 43 CFR 2521.2(d), provides that

[n]o desert-land application will be allowed unless accompanied by evidence satisfactorily showing \* \* \* the intending entryman has \* \* \* acquired [the] right to the permanent use of sufficient water to irrigate and reclaim all of the irrigable portion of the land sought, or that he has initiated and prosecuted, so far as then possible, appropriate steps looking to the acquisition of such a [water] right \* \* \*.

The regulation further provides that in states such as Nevada "where no permit or right to appropriate water is granted until the land embraced within the application is classified as suitable for desert-land entry or the entry is allowed," no application will be approved absent a showing the applicant is qualified under state law to secure such permit or right.

The Department has consistently rejected desert land entry applications not supported by evidence showing both that the applicant has obtained a water right and that the right would provide a permanent and feasible source of sufficient water for irrigation. Janice Pearson, 73 IBLA 220 (1983); Patricia K. Scher, 49 IBLA 276 (1981). This Board has affirmed rejection of an application in Nevada where the applicant who proposes to irrigate the land by means of a well makes no showing that, at the time of filing of his application, he had taken any action to initiate the right to appropriate underground water. Elmer A. Kubler, 80 IBLA 283 (1984); James R. Hardcastle, 69 IBLA 341 (1982).

The record on appeal contains no showing by appellants establishing their qualification under state law to appropriate water. It also does not appear that appellants have taken the necessary action to acquire the needed water rights. As a result, their applications were properly rejected. As pointed out in Janice Pearson, supra, however, the rejection of their applications for this reason is without prejudice to a later application, which must, of course, include evidence to show sufficient water rights to irrigate the land have been appropriated by them, or, at least, that application to obtain the necessary water has been made.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Franklin D. Arness  
Administrative Judge

We concur:

Bruce R. Harris  
Administrative Judge

Edward W. Stuebing  
Administrative Judge